

CHAPTER 12

~~GRIEVANCES AND APPEALS~~ ~~FOR PERMANENT EMPLOYEES~~REPEALED

~~Section 1. — Statement of Policy.~~

~~It is the policy of the State of Wyoming to resolve employee grievances and appeals in a fair and timely manner. Employees may voluntarily participate in the mediation program which assists disputing parties in reaching a mutually acceptable resolution to issues and concerns raised by the parties. Employees who voluntarily choose to participate in the mediation program shall not forfeit their right to present a grievance in accordance with this chapter. Employees shall have the right to present a grievance or appeal, pursuant to the provisions of this chapter, without coercion, restraint, discrimination or reprisal. No State agency covered by these Personnel Rules shall adopt or implement a separate or different employee grievance procedure. In implementing and facilitating this policy, all state agencies shall comply with these rules and all other applicable law.~~

~~Section 2. — General Provisions.~~

~~(a) — Time Periods.~~

~~———— (i) — In computing any period of time prescribed or allowed by this chapter, the day of the act, event or default from which the designated period of time begins shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is ten (10) days, intermediate Saturdays, Sundays or legal holidays shall be excluded from the computation.~~

~~———— (ii) — When these rules or a notice given there under is required or allowed to be done at or within a specified time, the Human Resources Administrator may, upon written application, for good cause shown, at his discretion extend or enlarge the time period, provided that any such written request is received before the expiration of the period originally prescribed.~~

~~———— (iii) — Any procedural step allowed by these rules may be waived by mutual written agreement between the parties involved. A copy of this agreement shall be forwarded to the Human Resources Administrator or the Presiding Officer, as applicable.~~

~~(b) — Designation of Parties. — As used in this chapter, the word employee shall refer to permanent employees only.~~

~~(c) — Representation. — In all proceedings provided under this chapter an employee who is a party to the proceedings shall have the right to appear personally and may be accompanied by his/her chosen representative.~~

~~(d) — Release Time. — The employee who is a party to the proceedings, any employees who are witnesses subpoenaed by the Presiding Officer for a party or are requested to appear by a Grievance Committee, and employee Grievance Committee members shall be granted administrative leave while participating in any proceedings provided under this chapter. In accordance with Section 5 (a) and Section 5 (c), an employee who has filed a grievance shall be entitled to a maximum of eight (8) hours of administrative leave to prepare for presentation of the grievance. Prior notice shall be given to the employee's supervisor.~~

~~(e) — Grievance Committee: Membership and Compensation. — Grievance Committee members shall be individuals who have consented to serve as such and who are not parties to the dispute, nor~~

~~employees from the same agency as either party to the dispute, nor advocates of either party to the dispute. Grievance Committee members shall not have any ex parte communication with the parties to the dispute during the grievance process. Non-employee Grievance Committee members shall serve without compensation but shall be reimbursed for expenses in the same manner and at the same rate as employees.~~

~~(f) — Personnel Appeal Hearing: Presiding Officer and Compensation. As used in these Rules, Presiding Officer shall mean the person agreed upon by the employee and the agency to preside over the personnel appeal hearing, or, if the employee and the agency are unable to agree upon such a person, Presiding Officer shall mean the hearing officer assigned from the Office of Administrative Hearings. The Presiding Officer shall be an individual who has consented to serve as such and who is fair, impartial and disinterested and who is not a party to the dispute, is not from the same agency as either party to the dispute and is not an advocate of either party to the dispute. Presiding Officers shall be compensated and have their expenses reimbursed as provided in W.S. 9-2-1019(a).~~

~~(i) — The Presiding Officer shall have original jurisdiction in all hearings which involve the dismissal or the involuntary separation due to a reduction in force of a permanent employee and jurisdiction in disciplinary suspension appeals, pursuant to Chapter 12, Section 6 of these Rules.~~

~~(g) — Grievance Committee Decisions. Decisions of a Grievance Committee shall require a majority vote of the body. No hearing shall be conducted without the presence of all committee members, unless stipulated to by the parties. The hearing may be conducted by telephone or other electronic media.~~

~~(h) — Custody of Records. The State Human Resources Administrator shall be the official custodian of all papers and records pertaining to the provisions of this chapter. Such material shall be considered confidential, but the parties and/or their representative shall have access to any and all materials associated with the employee, the grievance or the appeal except as prohibited by statute and rules adopted in accordance with the Wyoming Administrative Procedure Act.~~

~~(i) — Confidential Proceedings. Grievance or appeal proceedings may be conducted in executive session not open to the public, unless the employee requests a public hearing pursuant to W.S. 6-4-405 et. seq.~~

~~Section 3. — Definition of Grievance.~~

~~A grievance is a dispute, excluding a dismissal or an involuntary separation due to a reduction in force, between an employee and management of the employee's agency which involves the interpretation or application of policies, rules, regulations, and/or statutes which have been adopted by an agency, Governor's Executive Order, or the State Legislature to cover personnel practices and/or working conditions.~~

~~Section 4. — Compliance with Procedure.~~

~~If an employee does not properly comply with the procedural steps required by this chapter, the employee shall have forfeited rights granted by these provisions for the grievance. If the agency does not properly comply with the procedural steps, the employee may proceed to the next step in the grievance procedure within ten (10) days of the agency's noncompliance with the procedural steps.~~

~~Section 5. — Grievance Procedure Steps.~~

~~(a) — Within ten (10) days of the event giving rise to the grievance or of the employee having knowledge of the event, the employee may present the grievance in writing to the management employee~~

~~at the lowest level giving rise to the dispute. When the grievance involves the allegation of sexual harassment, the employee may present the grievance to the agency head in accordance with Section 5 (c) of this chapter. When the management employee is the agency head, the grievance shall be presented to the agency head in accordance with Section 5 (c) of this chapter. The grievance shall specify the time, parties involved, a brief statement of the grievance and relief sought.~~

~~(b) Within ten (10) days of receiving the written grievance, the appropriate management employee shall hold a conference with the employee to resolve the dispute and render a decision in writing to the employee within ten (10) days after the conference. The written decision shall state the next step in the appeal process for the employee and the time limit for that step.~~

~~(c) If the decision of the management employee is unsatisfactory to the employee, the employee may, within ten (10) days of the date of the decision, submit the grievance in writing to the agency head. The grievance shall specify the time, parties involved, a brief statement of the grievance and relief sought.~~

~~(d) Within ten (10) days of receiving the written grievance, the agency head or his/her designee and the appropriate management employee shall hold a conference with the employee to resolve the dispute and render a decision, in writing, to the employee within ten (10) days after the conference. A decision by the agency head or the designee shall be the final step in the grievance procedure unless the grievance involves a dispute in accordance with Section 5 (e) of this chapter.~~

~~(e) If the decision of the agency head or the designee is unsatisfactory to the employee and if the grievance involves a written reprimand, a disciplinary suspension or an involuntary reappointment due to unsatisfactory work performance, the employee may, within ten (10) days of the date of the decision, request the Human Resources Administrator to establish a Grievance Committee to hear the matter. Other matters may be considered by a Grievance Committee at the discretion of the State Human Resources Administrator. All requests shall be submitted, in writing, to the State Human Resources Administrator and shall include the nomination of an individual to serve as a Grievance Committee member. A copy of this request to establish a grievance committee shall be provided to the employee's agency head by the employee.~~

~~(f) Within ten (10) days of the date of a request for the establishment of a Grievance Committee, the State Human Resources Administrator or his/her designee shall notify the head of the agency with which the employee has the dispute; and request the nomination of a Grievance Committee member. The agency head shall notify the State Human Resources Administrator or his/her designee of the nomination within ten (10) days.~~

~~(g) Within ten (10) days of receipt of the agency head nomination, the State Human Resources Administrator shall notify the two (2) nominees that they are to serve as Grievance Committee members, and that they shall within fifteen (15) days of receipt of such notice form the committee by selecting a third member. A chairperson and secretary shall be selected from among committee members.~~

~~(h) Grievance Committee Purpose and Authority:~~

~~(i) The purpose of the Grievance Committee is to resolve a dispute which falls within Section 5 (e) of this chapter.~~

~~(ii) The Grievance Committee has the authority to affirm, modify or reverse any action(s) so long as the decisions and recommendations are not in conflict with Personnel Rules, State Statutes, or agency rules and regulations. Decisions of the Committee are final unless the grievance is appealable in accordance with Section 6 of this chapter.~~

~~(i) — Grievance Hearings.~~

~~———— (i) — Within forty five (45) days of the formation of a Grievance Committee, the Committee shall schedule and hold a hearing or render a decision without a hearing, based solely on the written record.~~

~~———— (A) — The written record shall constitute and is limited to the documentation provided by the parties in Chapter 12 Section 5(a)(b)(c) and (d).~~

~~———— (B) — If the issues raised by either or both parties are such that further proceedings are unnecessary, the Committee shall submit a written decision to the State Human Resources Administrator who shall forward copies to both parties.~~

~~———— (C) — If the issues raised by either or both parties are such that further proceedings are necessary, the Committee shall initiate a hearing. The hearing shall be concluded within ten (10) days of initiation, provided that the hearing may be extended with the agreement of both parties and a majority of the Grievance Committee. The Grievance Committee shall select a location for the hearing which is most convenient for the parties and their interests~~

~~———— (ii) — General Provisions for a Grievance Hearing.~~

~~———— (A) — The chairperson shall ensure a fair, orderly, and expeditious hearing. Decisions to accept or reject evidence, upon objection by another committee member, shall require a majority vote of the Grievance Committee. Upon initiation of the hearing, the chairperson shall read the “Chairperson’s Opening Statement” and answer any questions regarding procedure prior to proceeding with the hearing.~~

~~———— (B) — The hearing shall be confined to those issues related to the subject matter presented in the original written grievance and issues reasonably necessitated by intervening development, and shall not be allowed to develop into a general inquiry into the policies and operation of an agency.~~

~~———— (C) — The Grievance Committee may issue requests to produce evidence.~~

~~———— (D) — If a party does not appear at the hearing, the Grievance Committee may base its decision on a consideration of the documents provided and on the presentation of the case by the party present.~~

~~———— (E) — The Grievance Committee may allow a party at its request to examine items which the other party intends to submit as evidence in the hearing. Such examination shall be completed at least three (3) days prior to the hearing unless the parties stipulate to a different time.—~~

~~(iii) — The hearing shall be opened with an announcement including identification of the parties and their representatives, identification of the Grievance Committee members and the date. No record shall be made of this hearing. The chairperson shall read aloud the following statement which shall constitute the guidelines under which the hearing is to be conducted. “This hearing will be conducted as informally as is compatible with an orderly process. As presiding officer for this hearing, I will take whatever action is necessary to ensure a fair, orderly, and expeditious hearing. This hearing will not be bound by rules of evidence. In the event that another member of this Grievance Committee objects to my decision to accept or reject evidence, the majority vote of the Grievance Committee shall govern. Documents pertinent to this dispute have been provided by the State Human Resources Administrator to this Grievance Committee. The employee or the employee’s representative may present an opening statement. The agency may then present an opening statement. The employee will call witnesses who~~

~~will give the committee any information they have pertinent to the grievance. Upon completion of the employee's presentation, the agency may present its case. Each party will be given the opportunity, at the appropriate times, to ask questions of the witnesses. Any member of the Grievance Committee may direct questions to any party or witness at any time during the proceedings. Before the conclusion of the hearing, each party may present a brief summary or closing statement. Only evidence relevant to the grievance will be allowed, and evidence which is repetitive will be excluded. Witnesses are asked not to discuss this case with anyone, other than the party for whom they are appearing until after they are excused. Witnesses are to remain available until they are excused by the Grievance Committee with the consent of both parties. Witnesses, except for the parties, shall not remain in the hearing room except when called. The Grievance Committee will report its written findings and decision, with all documents presented, to the State Human Resources Administrator within fifteen (15) days of the conclusion of the hearing. Are there any questions by either party?"~~

~~—— (iv) — Within fifteen (15) days following conclusion of a hearing, the Grievance Committee shall prepare a written summary statement of the evidence and its findings, decision and recommendations. Any committee members voting in the minority may prepare a minority statement which shall be a part of the material submitted. The chairperson shall ensure that all evidence, findings, decisions and minority statements and recommendations are forwarded to the State Human Resources Administrator, agency head, employee, and the employee's representative, if any.~~

~~Section 6. **Disciplinary Suspension or Involuntary Reappointment Due To Unsatisfactory Work Performance Appeal.**~~

~~If the disciplinary action being grieved by the employee is a disciplinary suspension or an involuntary reappointment due to unsatisfactory work performance, either party may, within twenty (20) days of the date of the decision of the Grievance Committee, file a petition for a personnel appeal hearing with the State Human Resources Administrator. Such appeal hearing shall be conducted as a new hearing, with opportunity for the presentation of evidence, as provided in Section 7 of this chapter. If neither party files a petition for a personnel appeal hearing within the time frame prescribed above, the Grievance Committee determination shall be final.~~

~~Section 7. **Dismissal/Reduction in Force/Disciplinary Suspension/Involuntary Reappointment Due to Unsatisfactory Work Performance Appeals.**~~

~~(a) — Within twenty (20) days of the date of a notice of dismissal, an involuntary separation due to a reduction in force, an appeal from a disciplinary suspension, an involuntary reappointment due to unsatisfactory work performance, a permanent employee may file a petition for a personnel appeal hearing with the State Human Resources Administrator. In order to be timely filed, the State Human Resources Administrator must receive the petition within the twenty (20) day deadline. The petitioning party shall be referred to hereinafter as the petitioner and the responding party as the respondent. The petition shall include a brief statement of the events giving rise to the dismissal, the involuntary separation due to a reduction in force, the disciplinary suspension or the involuntary reappointment due to unsatisfactory work performance and the relief sought. Within five (5) days of receipt of the petition for a personnel appeal hearing, the Human Resources Administrator or designee shall provide a copy to the Attorney General, the employing agency and the employee or their representative as appropriate. If an employee or an agency does not petition for a personnel appeal hearing within the time prescribed, there shall be no other or further right to appeal, and the dismissal or the involuntary separation due to a reduction in force shall stand. The Grievance Committee decision shall stand if an employee or an agency does not petition for a personnel appeal hearing within the time prescribed in the case of a disciplinary suspension or an involuntary reappointment due to unsatisfactory work performance.~~

~~_____ (b) _____ Within twenty (20) days of the date of the petition for a personnel appeal hearing, the respondent shall file a written response and any motions challenging the timeliness of the petition for a personnel appeal hearing, the petition's compliance with Chapter 12, Section 7(a) of these Rules or the employee's status as a permanent employee with the State Human Resources Administrator. The response shall include a brief statement of the cause(s) for dismissal, the involuntary separation due to a reduction in force, the disciplinary suspension, the involuntary reappointment due to unsatisfactory work performance. The respondent shall send by mail or hand deliver a copy of the response and any motions to the petitioner or the petitioner's designated representative. Any response to a motion filed with the State Human Resources Administrator shall be filed within ten (10) days after the motion is filed, and the party filing the response to a motion shall at the time of filing the response send by mail or hand deliver a copy of the response to the other party and the other party's representative, if applicable.~~

~~_____ (c) _____ Immediately following the filing of the response to the petition, the agency and the employee, or their designated representatives, if any, shall confer and attempt to select a mutually agreed upon Presiding Officer. Within twenty five (25) days of the filing of a petition for a personnel appeal hearing, the agency shall file with the State Human Resources Administrator a *Designation of Presiding Officer* on the appropriate form designated by the State Human Resources Administrator. The *Designation of Presiding Officer* shall provide the name of the Presiding Officer agreed upon by the parties, or shall indicate that the parties were unable to agree upon a Presiding Officer, and shall be signed by the employee and the agency head or his/her designee and their representatives, if applicable. The failure to timely file a completed *Designation of Presiding Officer* shall result in an assignment of the appeal to the Office of Administrative Hearings. The State Human Resources Administrator shall have jurisdiction to determine the timeliness and sufficiency of the *Designation of Presiding Officer*. If the agency files a completed and signed *Designation of Presiding Officer* naming a Presiding Officer upon which the employee and the agency agree, the State Human Resources Administrator shall assign the matter to the named Presiding Officer within twenty (20) days of the date the petition for personnel appeal hearing was filed.~~

~~_____ (d) _____ If the parties are unable to agree upon a Presiding Officer, the State Human Resources Administrator shall assign the matter to the Office of Administrative Hearings within thirty five (35) days of the date the petition for personnel appeal hearing was filed. Within ten (10) days after an appeal is assigned to the Office of Administrative Hearings, the Office of Administrative Hearings shall issue a docketing notice to the parties notifying the parties that the appeal has been docketed in the Office of Administrative Hearings and notifying the parties of the hearing officer assigned to hear the appeal. Each party may exercise only one (1) peremptory challenge against only one (1) Office of Administrative Hearings hearing officer. Any motion for a peremptory disqualification of an Office of Administrative Hearings hearing officer shall be filed with the Office of Administrative Hearings within ten (10) days of the issuance of the Office of Administrative Hearings docketing notice. Motions for disqualification of a hearing officer for cause shall be made in accordance with Rule 40.1(b) of the Wyoming Rules of Civil Procedure.~~

~~(e) _____ After a petition for a personnel appeal hearing is filed, the State Human Resources Administrator shall have jurisdiction, in addition to that specified elsewhere in these Rules, to determine the timeliness of the petition, whether the petition complies with the requirements of Wyoming Personnel Rules Chapter 12, Section 7(a), and whether the employee is a permanent employee entitled to the relief provided by Chapter 12 of the Wyoming Personnel Rules. Motions to resolve any question not within the jurisdiction specifically granted to the State Human Resources Administrator by these Rules shall be filed with the Presiding Officer. The State Human Resources Administrator may issue orders on any matter within his jurisdiction prior to transferring the appeal to the Presiding Officer. The State Human Resources Administrator may issue orders on any matter within his jurisdiction either upon motion of a party or on his own motion.~~

~~(f) The State Human Resources Administrator shall provide the Presiding Officer with the original or certified copies of the entire record of the proceedings under review on the same date the State Human Resources Administrator assigns the appeal to the Presiding Officer.~~

~~(g) Upon final appointment, the Presiding Officer shall have the authority to:~~

~~—— (i) conduct hearings in accordance with W.S. 16-3-112(b)(i) through (vii) of the Wyoming Administrative Procedure Act and the personnel rules of the executive branch of the state;~~

~~—— (ii) rule upon any motion not previously decided by the State Human Resources Administrator, including motions addressed to jurisdictional issues;~~

~~—— (iii) determine if the agency complied with relevant procedural requirements of the personnel rules of the executive branch of the state of Wyoming;~~

~~—— (iv) determine, based upon the evidence presented at hearing, whether the agency established facts by a preponderance of the evidence constituting good cause for the personnel action, in which event the action shall be affirmed, or whether the facts established by the agency do not constitute good cause for the personnel action, in which event the action shall be reversed; and~~

~~—— (v) recommend alternative management action.~~

~~(h) Personnel Appeal Hearing.~~

~~—— (i) Unless the parties stipulate in writing to an extension of the time period provided in this section or the matter is continued for good cause by the Presiding Officer, the Presiding Officer shall open a hearing and render a decision within thirty (30) days of the close of evidence. Any disposition made without a hearing shall be in accordance with Rule 56 of the Wyoming Rules of Civil Procedure.~~

~~—— (A) If the Presiding Officer determines that the issues raised by either or both parties are such that further proceedings are unnecessary, the Presiding Officer shall make and issue a finding that further proceedings are unnecessary and shall submit a written decision to the State Human Resources Administrator who shall forward copies to both parties.~~

~~—— (B) If the Presiding Officer determines that the issues raised by either or both parties are such that further proceedings are necessary, the Presiding Officer shall make and issue a finding that further proceedings are necessary and shall initiate a hearing.~~

~~—— (ii) General Provisions for a Personnel Appeal Hearing.~~

~~—— (A) A personnel appeal hearing shall be conducted in accordance with applicable provisions of the Wyoming Administrative Procedure Act (Reference W.S. 16-3-110 through 16-3-115), the Wyoming Rules of Civil Procedure and, if assigned to the Office of Administrative Hearings, the Office of Administrative Hearings Rules. If any rule of the Wyoming Rules of Civil Procedure, except Rule 40.1(b), or any rule of the Office of Administrative Hearings Rules conflicts with a rule of the Wyoming Personnel Rules, the Wyoming Personnel Rules shall govern.~~

~~—— (B) The Presiding Officer shall establish a file and docket the case. A case file shall be made up of all documents, evidence, transcripts and exhibits pertaining to the case.~~

~~_____ (C) If a party does not appear at the hearing, the Presiding Officer may base its decision on a consideration of the documents filed and on the presentation of the case by the party present.~~

~~_____ (D) The expense of the hearing shall be charged to and borne by the agency pursuant to W.S. 9-2-1019.~~

~~_____ (iii) The hearing shall be opened by the Presiding Officer with an announcement of the docket number and the title of the matter and case to be heard.~~

~~_____ (iv) Opening statements may be made and each of the parties may offer rebuttal evidence within the discretion of and by order of the Presiding Officer.~~

~~_____ (v) At the conclusion of the hearing, closing statements may be made by the parties and/or designated representatives. The time for oral arguments may be limited by the Presiding Officer.~~

~~_____ (vi) Within thirty (30) days of adjournment of the hearing, the Presiding Officer shall file with the State Human Resources Administrator a written decision and order containing Findings of Fact and Conclusions of Law and shall provide written certified notice of the decision to all parties to the appeal.~~

~~(i) Final Agency Action and Appeal:~~

~~_____ (i) The decision of a Presiding Officer under Chapter 12, Section 7 of these Rules constitutes final agency action, and any party, including the State of Wyoming, aggrieved by a decision of a Presiding Officer may seek judicial review of that decision in district court pursuant to W.S. 16-3-114. The district court or supreme court may award reasonable fees and costs to the prevailing party.~~

~~_____ (ii) Upon reversal of a personnel action, and in lieu of seeking judicial review as provided above, the agency shall retain authority to take other management actions, as recommended by the Presiding Officer, including less severe personnel action, based upon the facts found at the hearing, and subject to the provisions of the Wyoming Personnel Rules governing said personnel action. The agency shall either seek judicial review of the Presiding Officer's decision or take other management action recommended by the Presiding Officer within the thirty (30) day time period prescribed by Rule 12 of the Wyoming Rules of Appellate Procedure. The agency's decision to take other management actions recommended by the Presiding Officer shall constitute final agency action, and the employee may seek judicial review of that action in district court pursuant to W.S. 16-3-114. Judicial review of the recommended management action shall be based upon the record of the personnel appeal hearing.~~